

BEFORE THE TENNESSEE STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF

A. J.

PETITIONER,

VS.

TIPTON COUNTY
SCHOOLS,

RESPONDENT.

No. 02-26

OPINION

Background Information

This matter was heard on June 5, 2002 and June 28, 2002 before the Honorable Richard H. Walker, Administrative Law Judge for the State of Tennessee whereupon it appeared that the Petitioner requested a due process hearing on April 4, 2002.

The Petitioner contends that the child did not receive a free appropriate public education through the implementation of his Individualized Educational Program (I.E.P.). During the 2001-2002 school year this child was placed in the regular classroom and was identified as hearing impaired. He was assisted by a sign language interpreter throughout the school day.

The Petitioner had previously had a due process hearing concerning the 2001 I.E.P. which dealt with some of the same issues. This Court ruled at the hearing in this matter that all issues previously brought up in case number 01-18 heard by Judge Seaman were subject to res judicata and therefore could not be brought up again in the present case. This opinion is therefore confined to the implementation of the I.E.P. for the 2001-2002 school year.

Issues

Did the school system provide a free appropriate public education in the implementation of the 2001 Individualized Educational Program.

Findings of Fact and Conclusion of Law

In Board of Education of the Henrick Hudson School District v. Rowley, 458 U. S. 176 (1982) the United States Supreme Court held that a free appropriate public education must be provided which is reasonably calculated to provide educational benefit to the child.

In Doe v. Board of Education of Tullahoma City Schools 9 F. 3d 455 (6th Circuit 1993) followed this case holding there was no intention of creating a maximizing standard for a free appropriate public education.

In Fort Zumwalt v. Clynes, 119 F.3d 607 (8th Circuit 1997), held that the Individuals with Disabilities Educational Act does not require the best possible education or superior results.

The Petitioner first contends that the child was not allowed additional time to complete assignments and/or tests. It is clear from the record that the child's teachers testified that additional time was allowed to complete assignments and examinations. This is clear from the testimony of Greg Hudson, his homeroom teacher, (Vol II, page 261 of the trial transcript). Also see testimony of Sharon Young, language teacher (Vol II, page 289); Tina Mullins, history teacher (Vol II, page 311); and Charles Crowder, science teacher (Vol II, page 239).

Greg Hudson (Vol II, page 261-262) also testified that modifications were made for the child until they were no longer required. The proof shows that the school system also provided preferential seating, notes from peers, teachers and weekly grade reports.

The parent's main issue or contention is that the interpreters were inadequate. The facts are clear that when the child's mother served as an interpreter for the school system the child made better grades. Upon changing the interpreter the child did not make grades that were consistent with the previous year although IQ scores increased. The interpreters did not provide additional coaching or tutoring and were not required to provide that service. The child received average grades and was expected to advance to the next grade level. Additionally, there is no proof presented in the record that additional instruction was necessary for the child to receive educational benefit.

There were a few occasions when the interpreters were late due to circumstances beyond their control. On one occasion the interpreter was not provided on a field trip, while on the bus, although the interpreter met the child where the field trip took place.

The parents also contend that the child could not understand the interpreters. The burden of proof is upon the Petitioner to prove by the preponderance of evidence that the child could not understand the interpreters and that this deprived him of receiving an educational benefit. The Petitioner has failed in this burden of proof.

Based on the reasons set forth above the Court holds that the Defendant is the prevailing party and the child received a free appropriate public education.

Summary

The Court holds that the Defendant is the prevailing party and the child received a free appropriate public education.

Honorable Richard H. Walker
Administrative Law Judge
Tennessee Department of Education

Certificate of Service

I, Richard H. Walker, on this the 9th day of August , 2002 do hereby certify that I have forwarded a copy of the foregoing Opinion to the Petitioner and Ms. Melinda Baird at 321 Ebenezer Road, Knoxville, Tennessee 37923 by placing same in the United States Mail postage being fully prepaid.

Richard H. Walker
Administrative Law Judge
Tennessee Department of Education